



1 of 2 DOCUMENTS

UNITED STATES OF AMERICA, Plaintiff, v. USX CORPORATION, Defendant

CIVIL ACTION NO. CV-97-, G-3188-S

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA

1998 EPA Consent LEXIS 358

February 13, 1998, Decree Filed February 12, 1998

COUNSEL:

[*1] LOIS J. SCHIFFER, Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, 10th & Pennsylvania Avenues, Washington, D.C. 20530; JAMES A. LOFTON, Senior Counsel, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 1425 New York Avenue, N.W., Washington, D.C. 20005; G. DOUGLAS JONES, United States Attorney, Northern District of Alabama; HERBERT J. LEWIS, Assistant United States Attorney, Northern District of Alabama, Room 200, Robert S. Vance Federal Building, 1800 Fifth Avenue, North, Birmingham, Alabama 35203; PHYLLIS P. HARRIS, Regional Counsel, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303; JOAN REDLEAF DURBIN, Associate Regional Counsel, Office of RCRA and Federal Facilities Legal Support, Environmental Accountability Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303

CHARLES G. CARSON, III, Vice President, Environmental Affairs, USX Corporation, 600 Grant Street, Pittsburgh, Pennsylvania 15219-2749; EDWARD H. JONES, JR., ROBERT F. CASSELBERRY, [*2] U.S. Steel, 600 Grant Street, Pittsburgh, Pennsylvania 15219-2749

OPINION:

CONSENT DECREE

I. Background

A. The United States of America, at the request of the Administrator of the U.S. Environmental Protection Agency (EPA), filed a complaint against Defendant USX Corporation (USX) with respect to U.S. Steel - Fairfield Works, a facility owned and operated by USX in Fairfield, Alabama, in which certain regulated hazardous wastes were alleged to have been generated.

B. The United States' Complaint initiating this civil action was brought pursuant to Section 3008(a), (g) and (h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a), (g) and (h) (hereinafter collectively referred to as "the Act" or "RCRA").

C. Pursuant to the authority of Section 3008(a), (g) and (h) of the Act, 42 U.S.C. § 6928(a), (g) and (h), the United States' Complaint sought the imposition of civil penalties and compliance with RCRA and its implementing regulations for violations of Subtitle C of the Act, 42 U.S.C. §§ 6921-6939b.

D. The Parties agree and the Court finds that [*3] settlement of these civil matters without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

NOW THEREFORE, before the taking of testimony, without the necessity of trial, without adjudication of any issues of fact or law, without any admission of liability or of any issue of fact or law by the Defendant, and upon the consent of the Parties hereto,

IT IS ADJUDGED, ORDERED AND DECREED THAT:

II. Definitions

1. Terms used in the Consent Decree that are defined in 42 U.S.C. §§ 6901-6991i or 40 C.F.R. Parts 260-271 shall have the meaning set forth in such definitions, unless specific definitions are contained herein.

2. Whenever the following terms are used in this Consent Decree, the definition specified hereinafter shall apply:

a. "ADEM" means the Alabama Department of Environmental Management.

b. "Defendant" means the Defendant in this action, USX Corporation (USX);

c. "EPA" means the United States Environmental Protection Agency;

d. "U.S. Steel facility" means the integrated steel mill (including the Exum Landfill and the dismantled coke works) owned and operated by USX located in [*4] Jefferson County, Alabama. The U.S. Steel facility is depicted on the diagram attached as Appendix A. The U.S. Steel facility does not include the Ensley Works, which was identified as an Area of Concern (AOC) in the RCRA Facility Assessment (RFA).

e. "Pipe Mill" means the seamless pipe mill at the U.S. Steel facility where steel pipes are manufactured, painted and varnished.

f. "Exum Landfill" means the solid waste industrial landfill owned and operated by USX at the U.S. Steel facility.

g. "Notify" and "submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the United States mail or dispatch by express courier not later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federally or state recognized holiday, the delivery, deposit, or dispatch shall be due on the next business day.

h. "Parties" means the United States and USX.

i. "Plaintiff" means the United States.

j. "Risk based assessment" means the evaluation of information concerning the hazardous properties of substances, the extent of human health and ecological exposure, [*5] and of the characterization of the resulting risks.

k. "Solid Waste Management Unit" (SWMU) means any unit which has been used for the treatment, storage or disposal of solid waste at any time, irrespective of whether the unit is or ever was intended for the management of solid waste. RCRA regulated hazardous waste management units are also solid waste management units. SWMUs include areas that have been contaminated by routine and systematic releases of hazardous waste or hazardous constituents, excluding one-time accidental spills that are immediately remediated and cannot be linked to solid waste management activities (e.g., product or process spills).

l. "Solid Waste Management Area" (SWMA) means a grouping of one or more SWMUs, based on geology, hydrogeology, geochemistry, geography, historical use, or other criteria, designed to facilitate implementation of the RCRA Facility Investigation (RFI) or Corrective Measures Study (CMS) at the U.S. Steel facility.

m. "Area of Concern" (AOC) means any area of the U.S. Steel facility, owned or under control of U.S. Steel or USX where a release to the environment of hazardous waste(s) or hazardous constituents has occurred, is suspected [*6] to have occurred, or may occur, regardless of the frequency or duration of the release.

III. Jurisdiction

3. The Parties agree and consent that this Court has jurisdiction over the subject matter and over the parties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, and also pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

IV. Parties Bound and Notice of Transfer

4. The provisions of this Consent Decree shall apply to and be binding upon the United States and upon USX and its officers, agents, successors, assigns and all persons acting on its behalf. Each Party certifies that at least one of its undersigned representatives is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Decree, to execute it on behalf of that party, and to legally bind the party on whose behalf he or she executes this Consent Decree.

5. No change in ownership, corporate, or partnership status relating to the U.S. Steel facility will in any way alter the responsibilities of USX under this Consent Decree. In the event of any conveyance of easement, or other interest in the U.S. Steel facility, or any portion of the facility, all [*7] of the Defendant's obligations under this Consent Decree shall continue to be met by USX.

6. During the pendency of this Consent Decree any deed, title, or other instrument of conveyance (excluding, however, a mortgage or deed of trust) executed by USX which transfers title to any part of the U.S. Steel facility shall contain a notice that the U.S. Steel facility is the subject of this Consent Decree setting forth the type of the case, case caption and index number, and the Court having jurisdiction.

7. Upon retention of each contractor performing work contemplated by this Consent Decree, USX shall notify each such contractor in writing so that it is made aware of the work schedules and reporting deadlines set forth herein, which are applicable to the work to be performed by the contractor. USX shall further require such contractor to notify in writing each subcontractor performing work contemplated herein of the requirements of this Consent Decree which are applicable to the work to be performed by such subcontractor.

V. Compliance Responsibility

8. USX shall at all times comply with federal and state rules and regulations governing generation, treatment, storage and disposal [*8] of hazardous wastes, including the land disposal of hazardous waste. USX shall comply with Sections 3002, 3004 and 3005 of the Act, 42 U.S.C. §§ 6922, 6924 and 6925, and all the regulations promulgated thereunder. In addition, USX shall comply with all applicable federal and state environmental laws.

9. This decree does not authorize USX to violate any statute or regulation.

VI. Supplemental Environmental Projects

10. As part of the requirements under this Consent Decree, USX shall perform and complete the Supplemental Environmental Projects (SEPs), which are identified and described in Appendices B and C. The parties agree performance of the SEPs are intended to secure significant environmental or public health protection and improvements.

11. USX hereby certifies that, as of the date of this Consent Decree, USX is not required to perform or develop the SEPs described in Appendices B and C by any federal, state or local law or regulation; nor is USX required to perform or develop the SEPs by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. USX further certifies that it has not received, and is not presently [*9] negotiating to receive, credit in any other enforcement action for the SEPs.

12. The total expenditure for the SEPs shall be not less than \$ 1,800,000.00 in accordance with the specifications set forth in Appendices B and C. USX shall provide EPA with documentation of the expenditures made in connection with each SEP as part of the SEP Completion Reports, discussed in Paragraphs 13 and 15.

13. USX shall complete the SEP and submit a SEP Completion Report for the SEP specified in Appendix B by February 1, 2001. The SEP Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks (which shall be made available to the United States, if requested);
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree;
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible); and

(vi) USX shall certify that [*10] it has not taken a federal tax deduction for the SEP specified in Appendix B under this Consent Decree.

14. USX shall submit a Periodic Report on the status of implementation of the SEP specified in Appendix B every six months following entry of this Consent Decree. Each Periodic Report shall contain a progress update on implementation of the SEP.

15. USX shall complete the SEP and submit a SEP Completion Report for the SEP specified in Appendix C within five years of the entry of this Consent Decree. The SEP Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks (which shall be made available to the United States, if requested);
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree;
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible); and
- (vi) USX shall certify that it has [*11] not taken a federal tax deduction for the SEP specified in Appendix C under this Consent Decree.

16. USX shall submit a Periodic Report on the status of implementation of the SEP specified in Appendix C every six months following entry of this Consent Decree. The Periodic Report shall contain a progress update on implementation of the SEP, a discussion of remediation activities, and an updated timetable for completion of the SEP.

17. USX shall submit any additional reports required by Appendices B and C to EPA in accordance with the schedule and requirements recited therein.

18. USX agrees that failure to submit the SEP Completion Reports or any Periodic Report required above shall be deemed a violation of this Consent Decree and USX shall be liable for stipulated penalties pursuant to Paragraph 29 below.

19. Notwithstanding the preceding Paragraph, the parties may, by mutual agreement, modify the construction/installation completion date for a SEP or modify the submission date of a SEP Completion Report or any Periodic SEP Report in accordance with the following procedures. Any agreed upon modification shall be in writing, shall be signed by the parties, and shall have as its effective [*12] date the date on which it is signed by EPA, and shall be incorporated into this Consent Decree. Any request by USX for a SEP completion date or submission date modification shall be made in writing. Such requests must provide justification for the requested modification. Any request by USX for a date modification and subsequent response by EPA shall not be subject to Dispute Resolution under this Consent Decree.

20. Following receipt of a SEP Report, EPA will do one of the following: a) accept the SEP Report; b) reject the SEP Report, notify USX, in writing, of deficiencies in the SEP Report and grant USX an additional 60 days in which to correct any deficiencies; or c) reject the SEP Report and seek stipulated penalties in accordance with Paragraph 29.

21. If EPA elects to reject a SEP Report and grant USX an additional 60 days in which to correct any deficiencies, EPA shall permit USX the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to the previous Paragraph within ten days of receipt of such notification. EPA and USX shall have an additional 30 days from receipt by EPA of the notification of objection to reach agreement. If agreement [*13] cannot be reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision to USX, which shall be final and binding on USX. USX agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Decree. In the event the SEP is not completed as contemplated herein, as determined by EPA, and EPA has not granted USX additional time in which to complete the SEP, stipulated penalties shall be due and payable by USX to EPA in accordance with Paragraphs 23 and 24 below.

22. In the event that USX fails to comply with any of the terms or provisions of this Section relating to the performance of the SEPs described in Appendices B and C, and/or to the extent that the actual expenditures for the SEP do not

equal or exceed the cost of any SEP described in Appendices B and C, USX shall be liable for stipulated penalties according to the provisions set forth below.

23. Except as provided in Paragraph 25 below, if the SEP specified in Appendix B has not been completed satisfactorily, USX shall pay a stipulated penalty to the United States in the amount of \$ 1,206,337.

24. Except as [*14] provided in Paragraph 25 below, if the SEP specified in Appendix C has not been completed satisfactorily, USX shall pay a stipulated penalty to the United States in the amount of \$ 243,663.

25. If the SEPs specified in Appendix B and C are not completed satisfactorily, but USX made good faith and timely efforts to complete each project and certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEPs, USX shall not pay any stipulated penalty.

26. If the SEP specified in Appendix B is satisfactorily completed, but USX spent less than 90 percent of the amount of money required to be spent for the project, USX shall pay a stipulated penalty to the United States in the amount of \$ 301,584.

27. If the SEP specified in Appendix C is satisfactorily completed, but USX spent less than 90 percent of the amount of money required to be spent for the project, USX shall pay a stipulated penalty to the United States in the amount of \$ 60,916.

28. If the SEP is satisfactorily completed, and USX spent at least 90 percent of the amount of money required to be spent for the project, USX shall not pay any stipulated penalty. [*15]

29. For failure to submit a SEP Completion Report as required above, USX shall pay a stipulated penalty of \$ 500 for each day after the date the report is due until the report is submitted. For failure to submit any other report required by this Section, or if a SEP Report is rejected by EPA, USX shall pay a stipulated penalty of \$ 250 for each day after the report was originally due until the report is submitted.

30. Whether USX has satisfactorily completed each of the SEPs called for by this Consent Decree and whether USX has made a good faith, timely effort to implement each SEP shall be the sole determination of EPA and not subject to Dispute Resolution.

31. Stipulated penalties for this Section shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

32. USX shall pay stipulated penalties under this Section within 15 days of receipt of written demand by EPA for such penalties. The method of payment, interest and late charges shall be in accordance with Section XV (Civil Penalty).

33. Any public statement, oral or written, in print, film, or other media, made by USX making reference to the either [*16] SEP identified in Appendices B and C shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the Department of Justice on behalf of the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act."

VII. Corrective Action

34. USX shall perform the Corrective Action in the manner and by the dates specified herein. All work undertaken pursuant to this Section shall be performed in a manner consistent with, at a minimum, the following: All EPA-approved Workplans and Reports; the Current Conditions Report (CCR) Scope of Work (Appendix D); the Final RCRA Corrective Action Plan (CAP), OSWER Directive 9902.3-2A, May 1994; EPA Region 4 Environmental Compliance Branch Standard Operating Procedures and Quality Assurance Manual dated February 1, 1991; Contract Laboratory Program Statement of Work for Inorganics - Document No. ILM 03.0; Contract Laboratory Program Statement of Work for Organics - Document No. OLM 01.8; RCRA and other applicable federal, state, and local regulations; and all applicable EPA guidance documents, including, but not limited to those publications [*17] listed at Appendix E of this Consent Decree. If any guidance specified herein is not the most current iteration, USX shall follow the most current guidance. The parties acknowledge that the USX facility is complex and diverse, and occupies a large geographic area. In addition, portions of the USX facility contain active manufacturing units. Accordingly, the involved nature of the USX facility may affect the scheduling and implementation of the work to be performed under this Consent Decree, and will be addressed in the Workplans discussed below.

35. All corrective action performed pursuant to this Section shall be under the direction and supervision of a scientist, engineer or geologist with experience in hazardous waste site investigation and remediation. Design drawings, specifications, and engineering plans will be prepared under the direction of a professional engineer registered in Alabama with experience in hazardous waste site investigation and remediation. Hydrogeologic studies and subsurface investigations shall be prepared under the direction of a similarly experienced geologist. USX shall notify EPA in writing of the name, title, and qualifications of the scientist, engineer [*18] or geologist, and of any contractors to be used in carrying out the terms of the corrective action and injunctive relief under this Consent Decree within ten days after selection by USX.

36. USX shall continuously evaluate during the terms of the corrective action and injunctive relief under this Consent Decree available data and assess the need for interim measures. Interim measures shall be used whenever possible to achieve the goal of stabilization. Should USX identify an immediate or potential threat to human health and/or the environment, USX shall notify EPA orally within 48 hours of discovery, followed by written notice within seven days, summarizing the immediacy and magnitude of the potential threat, and outlining possible alternatives for stabilization measures. EPA shall notify USX either to implement stabilization measures proposed by USX, or address the threat through other corrective action provisions contained in this Consent Decree.

37. USX shall prepare and submit to EPA a Current Conditions Report in accordance with the attached Scope of Work within 90 days following entry of this Consent Decree.

38. EPA shall review the Current Conditions Report and approve or disapprove [*19] with written comment. If EPA disapproves the Current Conditions Report, USX shall resubmit the Current Conditions Report within 45 calendar days following receipt of the disapproval and accompanying comments. The resubmitted Current Conditions Report shall address and satisfy each of EPA's comments. EPA shall approve, disapprove with comments or modify the resubmitted report. In the event EPA disapproves of the resubmitted report, USX shall be deemed in violation of the terms of this Consent Decree until a revised Current Conditions Report is submitted and approved by EPA, unless an extension for resubmittal is given by EPA.

39. USX shall prepare and submit to EPA a Phase I RCRA Facility Investigation (RFI) Workplan within 120 days of final approval of the Current Conditions Report. The Phase I RFI Workplan shall include, but not be limited to, the following:

a. A detailed methodology for the investigation of potential and/or known releases of hazardous wastes and/or hazardous constituents from those Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs) identified in the RCRA Facility Assessment (RFA), RFA Addendum, or Current Conditions Report, as requiring confirmatory [*20] sampling or an RFI. The Phase I RFI will investigate potential and/or known releases of hazardous wastes and/or hazardous constituents from those SWMUs and AOCs identified in the RFA, RFA Addendum, or Current Conditions Report, to soil, sediment, surface water, and air. In addition, the Phase I RFI will investigate known releases of hazardous wastes and/or hazardous constituents to groundwater;

b. A detailed plan for determining the direction and rate of groundwater flow at and from the facility, and characterizing initial groundwater aquifer parameters.

40. The Phase I RFI Workplan shall be in accordance with the CAP, and shall be designed to determine the presence, magnitude, extent, direction and rate of movement of any hazardous wastes or hazardous constituents within and beyond the U.S. Steel facility boundaries. The Phase I RFI Workplan shall document the procedures that USX shall use to conduct those investigations which may be necessary (1) to characterize the potential pathways of contaminant migration, (2) to characterize the source(s) of contamination, (3) to define the degree and extent of contamination, (4) to identify actual or potential receptors, (5) to support the [*21] development of alternatives from which corrective measures will be selected by EPA, (6) to identify SWMU groupings to establish Solid Waste Management Areas (SWMAs), and (7) to prioritize the groupings to enable implementation of the Phase II RFI, CMS and CMI. A specific schedule for implementation of all Phase I RFI activities at the U.S. Steel facility shall be included in the Phase I RFI Workplan.

41. EPA shall review the Phase I RFI Workplan and approve or disapprove with written comment. If EPA disapproves the Workplan, USX shall resubmit the Workplan within 60 calendar days following receipt of the disapproval and accompanying comments. The resubmitted Workplan shall address and satisfy each of EPA's comments. EPA shall approve, disapprove with comments or modify the resubmitted plans. In the event EPA disapproves of the resubmitted

plans, USX shall be deemed in violation of the terms of this Consent Decree until a revised Workplan is submitted and approved by EPA, unless an extension for resubmittal is given by EPA.

42. USX shall conduct the Phase I RFI in accordance with the EPA approved or modified Phase I RFI Workplan. USX shall submit a Phase I RFI Report to EPA for the [*22] U.S. Steel facility in accordance with the schedules contained in the approved or modified Phase I RFI Workplan.

43. The Phase I RFI Report shall include, but not be limited to, an indication for each SWMU or AOC, based on a description of any known releases, including the results of any sampling and analysis and other investigations conducted during the Phase I RFI, whether releases of hazardous wastes or constituents which threaten human health and the environment have occurred, are occurring or are likely to occur. The Phase I RFI Report shall include, but not be limited to, an indication whether a SWMU or AOC is a source which requires (1) no further action, (2) periodic monitoring to assess the potential for future releases that could threaten human health or the environment, or (3) further investigation to characterize releases and risks and to assess threats to human health or the environment and the need for corrective action.

44. EPA shall review the Phase I RFI Report and approve or disapprove with written comment. If EPA disapproves the Report, USX shall resubmit the Report within 60 calendar days following receipt of the disapproval and accompanying comments. The resubmitted [*23] Report shall address and satisfy each of EPA's comments. EPA shall approve, disapprove with comments or modify the resubmitted Report. In the event EPA disapproves of the resubmitted Report, USX shall be deemed in violation of the terms of this Consent Decree until a revised Report is submitted and approved by EPA, unless an extension for resubmittal is given by EPA.

45. USX shall prepare and submit to EPA a Phase II RFI Workplan within 120 days following the approval of the Phase I RFI Report. The Phase II RFI Workplan shall be prepared in accordance with the CAP, and further investigate known releases of hazardous wastes and/or hazardous constituents to soil, sediment, surface water, and air identified in the Phase I RFI Report. In addition, the Phase II RFI will investigate all potential and/or known releases of hazardous wastes and/or hazardous constituents to groundwater.

46. EPA shall review the Phase II RFI Workplan and approve or disapprove with written comment. If EPA disapproves the Workplan, USX shall resubmit the Workplan within 60 calendar days following receipt of the disapproval and accompanying comments. The resubmitted Workplan shall address and satisfy each of EPA's [*24] comments. EPA shall approve, disapprove with comments or modify the resubmitted plans. In the event EPA disapproves of the resubmitted plans, USX shall be deemed in violation of the terms of this Consent Decree until a revised Workplan is submitted and approved by EPA, unless an extension for resubmittal is given by EPA.

47. USX shall conduct the Phase II RFI in accordance with the EPA approved or modified Phase II RFI Workplan. USX shall submit a Phase II RFI Report to EPA for the U.S. Steel facility in accordance with the schedules contained in the approved or modified Phase II Workplan.

48. In the Phase II RFI Report, USX will, among other things as detailed in the RFI Phase II Workplan, designate which SWMUs, SWMAs or AOCs require no further action due to the absence of contamination, low levels of contamination below risk-based levels, or stabilization measures previously undertaken and approved by EPA.

49. EPA shall review the Phase II RFI Report and approve or disapprove with written comment. If EPA disapproves the Report, USX shall resubmit the Report within 60 calendar days following receipt of the disapproval and accompanying comments. The resubmitted Report shall address [*25] and satisfy each of EPA's comments. EPA shall approve, disapprove with comments or modify the resubmitted Report. In the event EPA disapproves of the resubmitted Report, USX shall be deemed in violation of the terms of this Consent Decree until a revised Report is submitted and approved by EPA, unless an extension for resubmittal is given by EPA.

50. Within 120 calendar days of final approval of the Phase II Report, USX shall submit to EPA a risk-based CMS Workplan for those SWMUs, SWMAs or AOCs requiring further action. The CMS Workplan shall be prepared and submitted in accordance with the CAP.

51. EPA shall review the CMS Workplan and approve or disapprove with comment in writing. If EPA disapproves the CMS Workplan, USX shall resubmit the CMS Workplan within 60 calendar days following receipt of the disapproval and accompanying comments. The resubmitted CMS Workplan shall address and satisfy each of EPA's comments. EPA shall approve, disapprove with comments or modify the resubmitted CMS Workplan. In the event EPA disapproves of the resubmitted CMS Workplan, USX shall be deemed in violation of the terms of this Consent Decree

until a revised CMS Workplan is submitted and approved [*26] by EPA unless an extension for resubmittal is given by EPA.

52. Upon EPA approval or modification of the CMS Workplan, USX shall implement the approved or modified CMS Workplan and submit a Draft CMS Report for the U.S. Steel facility in accordance with the schedules contained in the approved or modified CMS Workplan.

53. EPA shall review the Draft CMS Report and approve or disapprove with comment in writing. If EPA disapproves the Draft CMS Report, USX shall resubmit the Draft CMS Report within 60 calendar days following receipt of the disapproval and accompanying comments. The resubmitted Draft CMS Report shall address and satisfy each of EPA's comments. EPA shall approve, disapprove with comments or modify the resubmitted Draft CMS Report. In the event EPA disapproves of the resubmitted Draft CMS Report, USX shall be deemed in violation of the terms of this Consent Decree until a revised Draft CMS Report is submitted and approved by EPA, unless an extension for resubmittal is given by EPA.

54. Upon approval or modification and approval by EPA of the Draft CMS Report, EPA shall make available to the public for review and comment, for at least 30 calendar days, a summary of EPA's [*27] proposed corrective measures and EPA's justification for their selection. Included in the justification will be a copy of the final RFI Report and Draft CMS Report and EPA's modifications, if any, for the U.S. Steel facility.

55. USX shall establish a document repository at a local public library in proximity to the U.S. Steel facility.

56. USX shall utilize this repository to make available to the public all reports and any pertinent background documents, as determined by EPA, associated with USX's Corrective Action activities. These documents include, but are not limited to the final RFI Report, the Draft and Final CMS Report, the CMI Construction Completion Report and the Corrective Measures Completion Report.

57. EPA shall also utilize the repository to make available to the public any EPA documents, associated with USX's Corrective Action activities at the U.S. Steel facility, as deemed necessary by EPA.

58. Following the public review and comment period provided for in Paragraph 54 above, EPA shall notify USX of the corrective measures selected by EPA for the U.S. Steel facility. If the corrective measures recommended in the Draft CMS Report are not the corrective measures selected [*28] by EPA after consideration of public comments, EPA shall inform USX in writing of the reasons for the decision. USX shall modify the CMS Report based upon public comment if directed to do so in writing by EPA.

59. Following notification in writing by EPA of (1) the corrective measures it has selected for the U.S. Steel Facility; and (2) any modifications required by EPA to be made as a result of public comments, USX shall prepare a Final CMS Report. If USX disagrees with EPA's decision or revisions, USX shall state both its own and EPA's recommendations for corrective measures in the Final CMS Report, and such statement shall not be deemed in violation of this Consent Decree.

60. The Administrative Record supporting the selection of the corrective measures for the U.S. Steel facility will be available for public review at a public library identified in Paragraph 55 above, and the following location:

RCRA Enforcement and Compliance Branch

U.S. Environmental Protection Agency

Region 4

Atlanta Federal Center

61 Forsyth Street

Atlanta, Georgia 30303.

61. Within 90 calendar days after USX's receipt of notification of EPA's final selection of the corrective measures for the U.S. Steel [*29] facility, USX shall submit to EPA a Corrective Measures Implementation (CMI) Workplan for the U.S. Steel facility.

62. The CMI Workplan shall be developed in accordance with RCRA, its implementing regulations and relevant EPA guidance documents listed in Appendix E to this Decree. The CMI Workplan shall be developed and performed in a manner consistent with the CAP.

63. The CMI Workplan shall provide for the design, construction, operation, maintenance and monitoring of corrective measures at the U.S. Steel facility. In accordance with the provisions of the CAP, the CMI Workplan shall include five principal tasks, as follows: (1) Corrective Measures Design, (2) Corrective Measures Construction, (3) Corrective Measures Maintenance and Monitoring, (4) Corrective Measures Construction Completion Report, and (5) the Corrective Measures Completion Report. These tasks will include elements outlined in the CAP.

64. EPA shall review the CMI Workplan and approve or disapprove with written comment. If EPA disapproves the CMI Workplan, USX shall resubmit the CMI Workplan within 60 calendar days following receipt of the disapproval and accompanying comments. The resubmitted CMI Workplan shall [*30] address and satisfy each of EPA's comments. EPA shall approve, disapprove with comments or modify the resubmitted plan. In the event EPA disapproves of the resubmitted plan, USX shall be deemed in violation of the terms of this Consent Decree until a revised Workplan is submitted and approved by EPA, unless an extension for resubmittal is given by EPA.

65. USX shall commence and complete implementation of the tasks required by each approved or modified workplan in accordance with the standards, specifications and schedules stated in the particular plan.

66. The CAP, the Scope of Work attached to this Consent Decree and the workplans approved pursuant to this Consent Decree, may be modified by written agreement of the parties, which agreement shall be incorporated herein by reference. Such an agreement to modify the CAP, Scope of Work or workplan does not require approval by the Court but shall be effective upon its signature by the appropriate representatives of EPA and USX.

67. If USX discovers any previously undiscovered SWMUs or AOCs at the U.S. Steel facility at any time during the term of this Consent Decree, USX shall notify EPA within 15 calendar days of any such discovery. [*31]

68. USX shall conduct interviews, research and gather any available information regarding the previously unidentified SWMUs or AOCs. Within 60 calendar days of discovery of a previously unidentified SWMU or AOC, USX shall submit to EPA documentation of all information available regarding the previously unidentified SWMU or AOC including but not limited to: the manner in which it was discovered; historical information on the use of the area; available information on the extent of contamination; a description of visual evidence of contamination; photographs of the area; all information concerning the source of the contamination which created the SWMU or AOC; and other relevant information.

69. USX shall provide, in writing, additional information regarding all previously unidentified SWMUs and/or AOCs, upon request by EPA, within 30 calendar days of USX's receipt of such request. All previously unidentified SWMUs and AOCs may be subject to assessment by confirmatory sampling, interim measures, RCRA facility investigation, corrective measures study and corrective measures implementation, if deemed necessary by EPA, in the same manner as outlined in this Section, to protect human health [*32] and the environment.

70. Any failure by USX to address comments received from EPA as directed on any workplan, report, or other submittal to EPA required by this Section shall constitute a violation of this Consent Decree for which USX may be subject to stipulated penalties in accordance with Section XVI (Stipulated Penalties) of this Consent Decree. If any plan, report, or other submittal required to be submitted to EPA for approval pursuant to this Section is not approved by EPA upon its second submission (i.e., after EPA has made its first set of comments), or fails to address the tasks required in the approved workplan according to the schedule, then the submission shall be deemed inadequate and a violation of this Consent Decree, and USX may be subject to stipulated penalties in accordance with Section XVI (Stipulated Penalties). The Parties retain their rights to invoke Section XVII (Dispute Resolution) consistent with the submittal/approval process in this Section. Liability for such stipulated penalties shall begin to accrue upon USX's failure to submit the required document within the time allotted for such submittal or in the case where USX resubmits a document after EPA [*33] has made its first set of comments, upon USX's receipt of EPA's notice of second disapproval or request for further revision. Assessment for additional stipulated penalties shall terminate on the date USX submits a document which fully complies with EPA's written comments.

VIII. Quality Assurance, Quality Control and Sampling

71. Throughout all sample collection and analysis activities, USX shall use EPA-approved quality assurance, quality control and chain-of-custody procedures.

72. USX shall ensure that all laboratories used for analyses perform such analyses according to the EPA approved methods outlined in all applicable documents as listed in Appendix E. If methods other than the EPA approved methods included in the above-referenced guidance documents are to be used, USX shall submit all protocols to be used for analyses to EPA for approval at least 30 calendar days prior to the commencement of the analyses.

73. USX shall ensure that laboratories used by USX for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of [*34] samples provided by EPA to demonstrate the quality of the analytical data.

74. USX shall notify EPA at least 14 calendar days in advance of the selection of laboratories which will be used by USX and require by contract with each such laboratory that EPA personnel and EPA-authorized representatives have reasonable access to the laboratories and personnel used for analyses. Denial of access to EPA personnel or representatives constitutes an independent, non-reviewable ground for rejection of that laboratory's data. Rejection of laboratory data under these circumstances is not subject to Dispute Resolution as provided for in this Consent Decree.

75. USX shall use EPA guidance (where applicable) entitled "Laboratory Data Validation Functional Guidelines for Evaluating Inorganic Analysis" dated July 1988, and "Laboratory Data Validation Functional Guidelines for Evaluating Organic Analysis" dated October 1990, to evaluate all data to be used in plans and reports submitted under this Consent Decree. This evaluation shall be provided to the United States as part of the plans and reports and shall be updated as required by EPA.

76. USX shall notify EPA in writing at least 14 calendar days [*35] before engaging in any sampling and analysis field activities, such as well drilling, installation of equipment or sampling. At the request of EPA, USX shall provide to EPA, or allow EPA or its authorized representative to take split samples of all samples collected by USX pursuant to this Consent Decree. Similarly, at the request of USX, EPA shall allow USX to take split or duplicate samples of all samples collected by EPA under this Decree.

IX. Spent Solvents at the Pipe Mill

77. USX operates a Pipe Mill where steel pipes are milled, painted and varnished. Spray nozzles from the varnishing operations are cleaned out with a flush solvent, which contains ten percent or more of the hazardous constituents methyl ethyl ketone and toluene before use.

78. The United States alleges that when the flush solvent can no longer be used for its intended purpose of cleaning the varnish spray nozzles at the Pipe Mill, the flush solvents are deemed to be "spent materials" as defined by 40 C.F.R. § 261.2(c)(1). Because the solvents used by USX in its varnishing operations contain ten percent or more of the hazardous constituents methyl ethyl ketone and toluene before use, the United States [*36] alleges that the spent flush solvents generated at the Pipe Mill are listed as F005 hazardous waste. 40 C.F.R. § 261.31.

79. Beginning December 15, 1995, USX shall not manage the alleged spent flush solvent by using it as a feedstock into the varnish day tank at the Pipe Mill. Notwithstanding that USX maintains that the alleged flush solvent is not F005 hazardous waste, for purposes of settlement, USX agrees to manage, store and dispose of the alleged spent flush solvent as F005 hazardous waste in accordance with 40 C.F.R. Part 262 and other applicable RCRA regulations.

X. Security at the Exum Landfill

80. The Exum Landfill is located on an open parcel of land.

81. Within 30 calendar days following entry of the Consent Decree, USX shall prepare and submit to EPA plans and specifications for restricted access and security around the entire confines of the Exum Landfill to prevent the unknown entry or minimize the possibility of unauthorized entry to the Exum Landfill (the Exum Security Plan).

82. EPA shall review the Exum Security Plan and approve or disapprove with written comment. If EPA disapproves it, USX shall resubmit the Exum Security Plan within 30 calendar days [*37] following receipt of the disapproval and accompanying comments. The resubmitted Exum Security Plan shall address and satisfy each of EPA's comments. EPA shall approve, disapprove with comments or modify the resubmitted plan. In the event EPA disapproves of the resubmitted plan, USX shall be deemed in violation of the terms of this Consent Decree until a revised Exum Security Plan is submitted and approved by EPA, unless an extension for resubmittal is given by EPA.

83. In addition, within 30 days of the entry of the Consent Decree, USX shall identify and physically restrict the area at the Exum Landfill where the spent flush solvent has previously been deposited and disposed of. USX shall cease any use of the area at the Exum Landfill where the spent flush solvent has been previously deposited.

XI. Additional Work

84. In order to protect human health or the environment, EPA may determine that work is required in addition to the tasks and deliverables required under this Consent Decree and its attachments. In this event, EPA shall direct in writing that USX perform the additional work and shall specify the basis for EPA's determination that the additional work is needed. [*38] Subject to the dispute resolution provisions of Section XVII (Dispute Resolution), USX shall perform the additional work requested. This Section shall not apply to SEPs completed satisfactorily pursuant to Paragraph 30.

85. If USX declines to undertake some or all of the additional work, EPA retains authority to undertake the work or to take any other action authorized under CERCLA, RCRA or other applicable statutes or laws.

86. If EPA determines that any activities undertaken pursuant to this Consent Decree have caused or may cause a release to the environment of hazardous waste, constituents or substances or a threat to the public health or the environment, EPA may order USX (1) to stop immediately any specified activities under this Consent Decree for such period of time as may be needed to abate any such release or threat and (2) to undertake any action which EPA determines is necessary to abate such release or threat. Relevant schedules affected by the work stoppage shall be extended by any period during which implementation is stopped by order of EPA plus any reasonable demobilization and/or re-mobilization periods, provided that the release or threat is not due to noncompliance [*39] by USX with this Decree.

XII. Project Coordinators

87. The parties designate the following individuals to act as Project Coordinators to monitor the progress of the activities required under this Consent Decree, to communicate informally concerning problems which have arisen or which are anticipated in the implementation of this Consent Decree and to coordinate communications between USX and EPA:

As to EPA:

Laurie Benton

RCRA Enforcement and Compliance Branch

U.S. Environmental Protection Agency

Region 4

Atlanta Federal Center

61 Forsyth Street

Atlanta, Georgia 30303

As to USX:

Richard L. Menozzi

Manager, Environmental Projects

USX Corporation

600 Grant Street, Room 2287

Pittsburgh, Pennsylvania 15219-2749

88. Such coordination and informal communication by the Project Coordinators shall not relieve the Parties of any notice and reporting requirements set forth elsewhere in this Decree and its attachments.

89. The United States and USX shall each have the unilateral right to change their respective Project Coordinator. Such a change does not require approval of the Court and shall be accomplished by notifying the other Project Coordinator of the change in writing at least [*40] seven calendar days prior to the effective date of the change.

XIII. Additional Reporting Requirements

90. Beginning with the seventh day of the month following the entry of this Consent Decree, and the seventh day of every other following month (*i.e.* bimonthly) until termination of this Consent Decree, USX shall submit to EPA a progress report which describes in detail activities undertaken by USX during the previous month to comply with the requirements of corrective action and injunctive relief under this Consent Decree, identify any anticipated or encountered problems at the U.S. Steel facility, and the proposed resolution of those problems.

91. In the event that a spill or other release of hazardous substances or hazardous wastes occurs at the U.S. Steel facility, requiring the notification of state or federal emergency response personnel, USX shall also notify the Project Coordinator for EPA within 24 hours after the occurrence of the spill or release. Such notification may be given orally.

XIV. Site Access

92. EPA, its employees and authorized agents (including contractors and subcontractors), shall have access to the U.S. Steel facility, at all reasonable [*41] times and in accordance with USX internal security and safety procedures for the purposes of inspecting, investigating or verifying compliance with the terms of this Consent Decree, including but not limited to, the requirements of Section VI (Supplemental Environmental Projects), consistent with the authority set forth in Section 3007 of RCRA, 42 U.S.C. § 6907. For the purposes of this Consent Decree, USX agrees that Section 3007 of RCRA authorizes inspecting, investigating and verifying USX's compliance with this Consent Decree.

93. USX shall have the right to accompany EPA representatives and employees throughout their presence at the U.S. Steel facility and to monitor and record the investigative activities conducted by EPA. If such a recording of EPA's investigatory activities is made, USX shall, upon request, provide a copy of the recording to EPA. This request shall be confirmed in writing.

94. This Section in no way limits any right of inspection and/or entry available to EPA pursuant to applicable federal or state laws, regulations, or permits. This Section does not constitute a waiver of any claim of attorney-client privilege or attorney-work product that USX may assert [*42] with regard to documents or recordings at the U.S. Steel facility.

95. To the extent that work required by this Consent Decree, or by any approved Scope of Work or Workplan prepared pursuant to this Consent Decree, must be done on property not owned or controlled by USX, Defendant shall use its best efforts to obtain access agreements from the owner(s) of such property within 30 days of approval of any Workplan for which site access is required. "Best efforts" as used in this Paragraph shall include, at a minimum, a certified letter from USX to the present owners of such property requesting access agreements to permit USX and EPA and its authorized representatives to enter and move freely about such property. Any such access agreement shall be incorporated by reference into this Consent Decree. In the event that agreements for access are not obtained within 30 days of EPA approval of any Workplan which requires off-site access, USX shall notify EPA in writing within 10 days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements. In the event EPA obtains access for USX, USX shall undertake EPA approved corrective action on such property. [*43] Inability to obtain off-site access despite best efforts as defined herein will not constitute a violation of this Consent Decree.

XV. Civil Penalty

96. Based on the nature of the alleged violations, USX's agreement to perform the SEPs described in Appendices B and C, and other relevant factors, USX shall pay a civil penalty in the amount of one million dollars (\$ 1,000,000.00) within 30 days of entry of this Consent Decree plus interest calculated at the rate provided in 28 U.S.C. § 1961(a) from January 1, 1997. Payments under this Consent Decree shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank. Payment shall be made in accordance with instructions provided by the Plaintiff to USX upon execution of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day. In addition, a late penalty of six percent per annum shall be assessed on any unpaid principal which is overdue for 90 days or more. A copy of any check and any correspondence from USX to the United States Attorney shall be sent to the United States and EPA as provided [*44] in Section XXIV (Notices). The civil penalty set forth herein is a penalty within the meaning of Section 162(f) of

the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore, USX shall not treat this penalty payment as tax deductible for purposes of federal, state, or local law.

XVI. Stipulated Penalties

97. Except as provided in Section VI (Supplemental Environmental Projects), if USX fails to comply with the provisions of this Consent Decree, it shall pay the following stipulated penalties:

Period of Failure	Penalty Per Violation
To Comply	Per Day
1st through 30th day	\$ 1,000.00
31st through 60th day	\$ 2,000.00
61st day and beyond	\$ 5,000.00

98. Stipulated penalties under this Section shall be paid by certified check payable to the **"Treasurer of the United States"**.

Address for payment:

Chief, Civil Division

United States Attorney's Office

Northern District of Alabama

Room 200, Robert S. Vance Federal Building

1800 Fifth Avenue, North

Birmingham, Alabama 35203

A copy of the check and any correspondence from USX to the United States Attorney shall be sent to the United States and EPA as provided in Section XXIV (Notices).

99. Defendant [*45] shall notify EPA in writing of any failure to meet Consent Decree requirements for which stipulated penalties may be due as soon as it has knowledge of such failure. The United States reserves the right to demand payment of stipulated penalties upon a determination by the United States that a violation of this Consent Decree has occurred.

100. All stipulated penalties begin to accrue on the day after performance is due or on the day a violation occurs, and continue to accrue through the final day of correction of the noncompliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. Penalties shall accrue as provided in Paragraph 97 regardless of whether EPA has notified USX of a violation. All stipulated penalties owed to the United States under this Section shall be due and payable within 30 days of USX's receipt from EPA of a written demand for payment of the penalties, unless USX invokes the Dispute Resolution procedures under Section XVII (Dispute Resolution).

101. Stipulated penalties shall continue to accrue as provided in Paragraph 97 during any dispute resolution period, but need not be paid [*46] unless the United States prevails in the dispute. If the United States prevails by decision of this Court, USX shall remit payment of all accrued penalties within 15 days of receipt of the Court's decision. If USX fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties and any interest that has accrued.

102. The stipulated penalties set forth above shall be in addition to the rights reserved to the Plaintiff in Section XXI (Covenant Not To Sue By Plaintiff) of this Consent Decree. Nothing in this Section shall be construed as prohibiting, altering or in any way limiting the ability of the United States to seek other remedies or sanctions available by virtue of USX's violation(s) of this Consent Decree or of the statutes and regulations referenced herein except as provided by Section XXI (Covenant Not to Sue By Plaintiff). Except that the United States may elect, at its sole discretion, whether to seek stipulated penalties under this Section of the Consent Decree or to seek civil penalties under the Act for a particular violation of the Consent Decree, and USX shall not be liable for both stipulated penalties and statutory penalties [*47] for the same violation.

103. The payment of stipulated penalties shall not alter in any way USX's obligation to complete the performance of the actions described in this Consent Decree.

XVII. Dispute Resolution

104. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of USX that have not been disputed in accordance with this Section.

105. The dispute resolution procedures of this Consent Decree are invoked by one party sending the other party a written Notice of Dispute. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties. The period for informal negotiations shall not exceed 21 days from the date of the Notice of Dispute, unless it is modified by written agreement of the parties to the dispute.

106. In the event that the parties cannot resolve a dispute by informal negotiations under [*48] the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, USX invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the USX.

107. Within 14 days after receipt of USX's Statement of Position, EPA will serve on USX its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA.

108. Following receipt of both Statements of Position, the Director of the Waste Management Division, EPA Region 4, will issue a final written decision resolving the dispute, which sets forth the basis for EPA's decision. The Division Director's decision shall be binding on USX unless, within 21 days of receipt of the decision, USX files with the Court and serves on the United States a notice of judicial appeal setting forth the matter in dispute, the efforts [*49] made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to USX's notice of judicial appeal.

109. In any judicial review of the dispute, USX shall have the burden of proving, based on the administrative record of the dispute, that EPA's decision is arbitrary and capricious. For purposes of this Section, the administrative record shall consist of the Notice of Dispute, the Statements of Position and all supporting documentation, the Division Director's written decision and any other written records submitted by the Parties.

110. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of USX under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. However, payment of stipulated penalties with respect to the disputed matter, shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision [*50] of this Consent Decree unless USX prevails on a disputed issue. In the event that USX does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XVIII. Force Majeure

111. USX's obligation to comply with one or more of the provisions of this Consent Decree shall be deferred or excused to the extent and for the duration that the delay in compliance or inability to comply is caused by a "force majeure". A "force majeure" is defined as an event or set of circumstances that are beyond USX's control and that could not have been prevented by due diligence of USX. This force majeure provision shall not apply to any delay due to increased costs or USX's financial inability to carry out the provisions of this Consent Decree, or to USX's failure to make timely and bona fide applications and to exercise diligent effort to obtain permits. "Force majeure" shall include labor disputes beyond the control of USX.

112. USX shall notify EPA within 72 hours by telephone and shall submit written notification to EPA within seven business days after the date when it first obtained knowledge of a delay or potential delay. [*51] Such notice shall include the nature, cause and anticipated length of the delay and the steps which USX has taken and will take, with a schedule for implementation, to avoid or minimize the delay. Failure to provide this written notice within the required

time period shall constitute a waiver of USX's right to invoke "force majeure" as a basis for delay or prevention of performance under this Consent Decree. If the Parties agree that the delay was attributable to a "force majeure" event, the time for performance of the provision shall be extended for a period of time equal to the delay caused by the event plus any period of time necessary for any demobilization and remobilization.

113. If the Parties do not agree that the delay or inability to perform was caused by a "force majeure" event, or are unable to agree on the extent of delay, USX shall have the burden of proving that the delay was attributable to a "force majeure" event, that USX has exercised due diligence in minimizing the delay, and that, as a result of the delay, a particular extension period for compliance is required.

XIX. Public Access to Documents

114. All data, factual information, and documents obtained [*52] by the United States from USX pursuant to this Consent Decree shall be subject to public inspection unless identified as confidential by USX in conformance with 40 C.F.R. Part 2. Any assertion of confidentiality must be accompanied by responses to the questions listed at 40 C.F.R. § 2.204(e)(4). The data, factual information, and documents so identified as confidential shall be disclosed only in accordance with appropriate EPA and DOJ regulations. Environmental contamination data, including hydrogeological or chemical data, or any other scientific or engineering tests or data, shall not be deemed confidential.

XX. Record Retention

115. USX shall preserve, during the pendency of this Consent Decree and for a minimum of five years after its termination, or as required by law, whichever period is longer, at least one legible copy of all non-privileged records and documents, including computer tapes, in its possession which relate to its performance of its obligations under this Consent Decree. Not less than 60 days before expiration of the record retention requirements under this Consent Decree, USX shall notify EPA of the expiration of its record retention obligation and give [*53] EPA the opportunity to inspect and copy the applicable documents. This notification will identify the nature of the documents and their storage location or locations.

116. USX further agrees that within 30 days of retaining or employing any agent, consultant or contractor for the purpose of carrying out the terms of this Consent Decree, USX will enter into an agreement, with any such agents, consultants or contractors whereby such agents, consultants and/or contractors (excluding outside legal counsel) will be required to provide a copy to USX for subsequent retention by USX of all documents produced pursuant to this Consent Decree. Such agreement shall require said agents, consultants and/or contractors upon completion of their work or such earlier time as requested by the United States to furnish USX a copy of originals of all documents, data, analyses, and all other materials created or obtained during their performance of work specified in this Consent Decree.

XXI. Covenant Not To Sue By Plaintiff

117. With respect to USX's performance of the SEP identified in Appendix C, USX shall exercise due care at the North Birmingham Brownfields Site (the Site) with respect to [*54] existing contamination, and shall comply with all applicable local, state and federal laws and regulations. Existing contamination means any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the effective date of this Consent Decree. USX shall ensure its actions do not exacerbate any existing condition at the Site. USX shall ensure it does not cause or contribute to past or future releases of hazardous substances, pollutants or contaminants at or from the Site.

118. In the event USX becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, USX shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. Section 9603, or any other law, immediately notify EPA of such release or threatened release.

119. Subject to EPA's satisfaction that the above conditions [*55] have been met, and subject to the Reservation of Rights in Paragraphs 121 through 125 of this Consent Decree, and upon completion of the work specified in Section VI and Appendix C of this Consent Decree to the satisfaction of EPA pursuant to Paragraph 30 of this Consent Decree, the United States covenants not to sue or take any other civil or administrative action against USX for any and all civil liability for injunctive relief or reimbursement of past response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. Sections 9606 and 9607(a) with respect to the existing contamination.

120. In consideration of the payments that will be made by USX under the terms of this Consent Decree, except as expressly set forth in Paragraph 121, the United States covenants not to sue or bring any administrative action against USX pursuant to Sections 3008(a), (g) and (h) of RCRA for civil penalties or injunctive relief based on the allegations contained in the Complaint. This covenant not to sue shall take effect upon entry of this Consent Decree, but is conditioned upon satisfactory performance by USX of its obligations under this Consent Decree.

121. Reservations of rights. Notwithstanding [*56] any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, all rights against USX with respect to all matters other than those expressly specified in the covenants not to sue set forth in Paragraphs 119 and 120 of this Section, including but not limited to:

- (1) claims based on a failure by USX to meet a requirement of this Consent Decree;
- (2) liability arising under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, et seq.
- (3) liability for damages for injury to, destruction of, or loss of natural resources;
- (4) any criminal liability;
- (5) the assessment of penalties under Section 3008 of the Act, 42 U.S.C. § 6928; and
- (6) claims that the U.S. Steel facility may pose an imminent and substantial endangerment to health or the environment in accordance with Section 7003 of RCRA, 42 U.S.C. § 6973.

122. The rights reserved to the United States include the right to disapprove work performed by USX pursuant to this Consent Decree. Any such disapproval shall be subject to the Dispute Resolution provisions of this Consent Decree. This Consent Decree shall not be construed as [*57] a waiver or limitation of any rights, remedies, powers and/or authorities which the United States and EPA have under the Act or any other statutory, regulatory or common law enforcement authority.

123. The entry of this Consent Decree and USX's consent to comply herewith, shall not limit or otherwise preclude the United States from taking additional enforcement action pursuant to any federal or state laws, regulations or permitting conditions, except that the United States agrees that if USX complies with its obligations under this Consent Decree, it shall not impose or seek to impose additional civil penalties, injunctive relief or other sanctions or remedies for the claims alleged in the Complaint in this action up to the date of lodging of this Consent Decree.

124. This Consent Decree shall not be construed to affect or limit in any way the obligation of USX to comply with all federal, state and local laws and regulations governing the activities required by this Consent Decree.

125. This Consent Decree shall not be construed as a ruling or determination of any issue related to any federal, state, or local permit, if required in order to implement this Consent Decree or required [*58] in order to continue or alter operations of the U.S. Steel facility (including but not limited to construction, operation or closure permits required under RCRA) and USX shall remain subject to all such permitting requirements. USX shall be responsible for obtaining any federal, state, or local permit(s) for any activity at the U.S. Steel facility including those necessary for the performance of the work required by this Consent Decree.

XXII. Covenant By USX

126. USX hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the allegations contained in the Complaint. USX further agrees not to seek indemnification or reimbursement of the amount of \$ 1,000,000 referred to in Section XV (Civil Penalty) from any agency or department of the federal government. USX hereby reserves and retains any defense, cause of action, and right not explicitly and specifically waived in this Consent Decree.

XXIII. Costs

127. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Decree.

128. In the event that this Court subsequently determines that USX has violated the terms [*59] and conditions of this Consent Decree, USX shall be liable to the United States for any costs or other expenses incurred by the United States in any action or proceeding against USX for noncompliance with this Consent Decree.

XXIV. Notices

129. Whenever under the terms of this Consent Decree notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the following individuals at the addresses specified below, unless it is otherwise specifically provided in this Consent Decree. Any change in the individuals designated by either Party must be made in writing to the other Party. Any correspondence submitted to the government shall include a reference to the case caption and index number of this court action.

As to the United States and EPA:

Chief

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611, Ben Franklin Station

Washington, D.C. 20044

Regional Counsel

Environmental Accountability Division

U.S. Environmental Protection Agency

Region 4

Atlanta Federal Center

61 Forsyth Street

Atlanta, Georgia 30303

South Section Chief

RCRA [*60] Enforcement and Compliance Branch

U.S. Environmental Protection Agency

Region 4

Atlanta Federal Center

61 Forsyth Street

Atlanta, Georgia 30303.

As to USX:

Edward H. Jones, Jr.

Robert F. Casselberry

U.S. Steel

600 Grant Street

Pittsburgh, Pennsylvania 15219-2749.

The Parties designate the following individuals to receive any immediate notice and to communicate informally about problems incurred or anticipated in meeting the requirements of this Consent Decree and its attachments:

As to the United States:

Chief

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611, Ben Franklin Station

Washington, D.C. 20044

Regional Counsel

Environmental Accountability Division

U.S. Environmental Protection Agency

Region 4

Atlanta Federal Center

61 Forsyth Street

Atlanta, Georgia 30303

South Section Chief

RCRA Enforcement and Compliance Branch

U.S. Environmental Protection Agency

Region 4

Atlanta Federal Center

61 Forsyth Street

Atlanta, Georgia 30303.

As to the USX:

Edward H. Jones, Jr.

Robert F. Casselberry

U.S. Steel

600 Grant Street

Pittsburgh, Pennsylvania 15219-2749.

130. Such informal communication is intended to facilitate [*61] meeting the objectives of this Consent Decree and shall not relieve the parties of the notice and reporting requirements set forth elsewhere in this Consent Decree and its attachments.

XXV. Modification

131. Except as provided for herein, there shall be no modification of this Consent Decree without the written approval of both Parties to this Consent Decree and the Court.

132. Notwithstanding the preceding Paragraph, the Parties may, by written agreement, modify the proposals, Workplans, statements of work, and schedules provided for pursuant to the provisions of Section VI (Supplemental Environmental Projects) and Section VII (Corrective Action).

XXVI. Effective and Termination Dates

133. This Consent Decree shall be effective upon the date of its entry by the Court. The Consent Decree shall be terminated upon completion of all requirements of this Consent Decree excluding record retention.

134. When USX determines that it has complied with all requirements of this Consent Decree, including its attachments, it shall certify such compliance in writing to the United States. The certification by USX shall indicate the case name and civil action number and include [*62] the following language:

"I certify pursuant to Section XXVI (Effective and Termination Dates) of the Consent Decree that USX has completed all the requirements set forth in the Consent Decree including the requirements in Section VI (Supplemental Environmental Projects)."

The United States shall have 120 days following receipt of such certification to serve on USX written notice stating any opposition to the compliance certificate. Any such opposition shall state specifically what requirements of the Consent Decree have not been fulfilled. After receiving written notification from the United States or after the expiration of the 120-day time period, USX may file its certification with the Court and petition the Court with notice to the United States for termination of this Consent Decree. The United States may support or oppose USX's petition, and the Court may conduct such inquiry and rule as it deems appropriate.

135. Notwithstanding the preceding Paragraph, the Parties may at any time move jointly to terminate this Consent Decree without the certification based on their representation that all its requirements have been satisfied, and the Court may order such termination after [*63] conducting such inquiry as it deems appropriate. Termination of this Consent Decree will not terminate USX's obligation to preserve all records in accordance with the Record Retention provisions contained in Section XX (Record Retention).

XXVII. Retention of Jurisdiction

136. This Court shall retain jurisdiction of this matter until further order of the Court or until termination of this Consent Decree.

137. The United States retains the right to seek to enforce the terms of this Consent Decree and take any action authorized by federal or state law not inconsistent with the terms of this Consent Decree to achieve or maintain compliance with the terms and conditions of this Consent Decree or otherwise.

XXVIII. Public Notice Requirements

138. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for, inter alia, notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments.

139. The United States reserves the right to withdraw or withhold its consent if the comments [*64] regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. USX consents to the entry of this Consent Decree without further notice.

XXIX. Signatories/Service

140. Each undersigned representative of USX to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

141. USX hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified USX in writing that it no longer supports entry of the Consent Decree.

142. USX shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of USX with respect to all matters arising under or relating to this Consent Decree. USX hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule [*65] 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

Consent Decree entered in accordance with the foregoing this 12th day of Feb., 1998.

[ILLEGIBLE SIGNATURE]

UNITED STATES DISTRICT JUDGE

ATTEST:

BY: DEPUTY CLERK (SEAL)

FOR PLAINTIFF - UNITED STATES OF AMERICA

DATE: 12/8/97

DATE: 12/10/97

DATE: 12/11/97

DATE: 11/24/97

DATE: 11/18/97

FOR DEFENDANT - USX CORPORATION

DATE: 11-5-97

DATE: 11/3/97

Legal Topics:

For related research and practice materials, see the following legal topics:

Civil Procedure Judgments Entry of Judgments Consent Decrees Environmental Law Hazardous Wastes & Toxic Substances Resource Conservation & Recovery Act Identification & Listing of Hazardous Wastes Environmental Law Litigation & Administrative Proceedings Consent Decrees

109MHB

***** Print Completed *****

Time of Request: Wednesday, April 09, 2014 08:20:16 EST

Print Number: 1826:458282194

Number of Lines: 809

Number of Pages:

Send To: STROUGAL, PATRICIA
EPA ORC REGION IV ATLANTA
61 FORSYTH ST SW
ATLANTA, GA 30303-8931